

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

LAMAR ADVERTISING CO.,	:	APPEAL NO. C-120336
		TRIAL NO. A-1011494
Plaintiff-Appellant,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
700 BROADWAY PARTNERS, LLC,	:	
LACAISSE, INC.,	:	
and	:	
KZF DESIGN, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Lamar Advertising Co. appeals the judgment of the Hamilton County Court of Common Pleas granting summary judgment in favor of defendants-appellees, 700 Broadway Partners, LLC, LaCaisse, Inc., and KZF Design, Inc., (collectively, “KZF”), denying Lamar’s motion for summary judgment, and dismissing the matter with prejudice.

In a single assignment of error, Lamar argues that the trial court erred by granting judgment in favor of KZF.

This case involves a billboard on the roof of a building owned by 700 Broadway and leased by KZF. The billboard was the subject of a lease between KZF and Lamar. The lease provided in pertinent part:

This agreement is a Lease (not a License), and all signs, structures and improvements placed on the premises by or for the Lessee shall remain the property of the Lessee, and that, notwithstanding (sic) the fact that the same constitute real estate fixtures, Lessee shall have the right to remove the same at any time during the term of the Lease, or after the expiration of the Lease.

KZF terminated the lease in December 2008, and the parties entered into negotiations for a new lease agreement. In November 2009, while the negotiations were ongoing, Lamar removed the plywood face, skirt, and lighting from the billboard. At one point, KZF offered to enter into a short-term lease, but Lamar refused. The negotiations continued until January 2010 without producing a new lease.

Then, almost a year later, KZF repaired and replaced the remaining steel structure of the billboard. Lamar sought a preliminary injunction ordering KZF to permit it entry onto the premises to remove the remaining billboard structure. The trial court denied the motion for injunctive relief, and we affirmed the judgment on appeal.

In its complaint, Lamar alleged that KZF had breached the lease by refusing to allow Lamar to remove the billboard, by altering the billboard, and by converting the billboard to its own use. Lamar also asserted fraud and conversion claims. In its counterclaim, KZF sought a declaratory judgment that it owned the billboard.

The trial court granted summary judgment in KZF's favor and declared it the owner of the billboard.

To prevail on a breach-of-contract claim, a plaintiff must establish the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff. *See Brunsman v. W. Hills Country Club*, 151 Ohio App.3d 718, 2003-Ohio-891, 785 N.E.2d 794, ¶ 11 (1st Dist.). When the terms of a contract are clear and unambiguous, a trial court may not go beyond the plain language of the agreement to determine the intent of the parties. *See Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978).

Lamar argues that KZF breached the lease by replacing the steel structure of the billboard, maintaining that the lease granted Lamar the exclusive right to remove the structure even after the expiration of the lease. But this interpretation of the billboard-removal provision is simply not supported because that provision does not state that Lamar has the exclusive or sole right of removal. In contrast, the lease had specifically included such terms as “exclusively” and “sole” in other provisions of the agreement. Nothing in the lease precluded KZF from removing or repairing the billboard. Moreover, the lease had not been in effect for two years when KZF finally removed and replaced what little remained of the structure. Accordingly, we hold that the trial court did not err in granting judgment in favor of KZF on Lamar's breach-of-contract claims.

Furthermore, the trial court properly entered judgment in favor of KZF on Lamar's fraud and conversion claims because they arose from the same conduct underlying its contract claim. *See Gator Dev. Corp. v. VHH, Ltd.*, 1st Dist. No. C-080193, 2009-Ohio-1802, ¶ 18; *Kott v. Gleneagles Professional Builders & Remodelers, Inc.*, 197 Ohio App.3d 699, 2012-Ohio-287, 968 N.E.2d 593, ¶ 15 (6th

Dist.). Consequently, we overrule the assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HILDEBRANDT, P.J., HENDON and DINKELACKER, JJ.

To the clerk:

Enter upon the journal of the court on December 26, 2012
per order of the court _____.
Presiding Judge